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AUG 16 1996

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

August 16, 1996

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: Comments, CC Docket No. 96-149

Dear Mr. Caton:

Enclosed for filing please find an original and eleven copies of the Comments of the Association of Telemessaging Services International (ATSI) in the proceedings, FCC 96-308, CC Docket No. 96-149. Additional copies have been delivered to Janice Myles of the Common Carrier Bureau and the International Transcription Services.

Sincerely,

Herta Tucker
Executive Vice President

cc: International Transcription Services, Inc. (1 copy)
2100 M Street, N.W., Suite 140

Janice Myles (1 copy plus diskette)
Common Carrier Bureau
1919 M Street, N.W., Room 544

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Before the
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)	
)	
Implementation of the Non-Accounting)	CC Docket No. 96-149
Safeguards of Section 271 and 272 of the)	
Communications Act of 1934, as amended;)	
)	
and)	
)	
Regulatory Treatment of LEC Provision)	
of Interexchange Services Originating in the)	
LEC's Local Exchange Area)	

**COMMENTS OF THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

**ASSOCIATION OF TELEMESSAGING
SERVICES INTERNATIONAL (ATSI)**

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OUTLINE OF
ATSI COMMENTS

- I. The Commission Should Adopt Safeguards That Will Allow Small Businesses To Effectively Compete Against Incumbents as Enhanced Service Providers.

- II. Enhanced Service Providers Must be able to Access All Basic Service Functions of the Incumbent Network.
 - A. All Technically Feasible Points of Interconnection Should Be Made Available So That Enhanced Service Providers May Access Basic Service Functions at Reasonable Costs.

 - B. Unbundled Elements Should Be Defined to Include All Basic Service Functions, Offered at the Smallest Practical Level and with Costs Disaggregated on a Service-by-Service Basis, So That Small Businesses May Compete with Incumbents in the Provision of Enhanced Telecommunications Services.

- III. Enhanced Service Providers Must be able to Access the Incumbent Network with Costs Comparable to Collocation within the Central Office.

- IV. Enhanced Service Providers Must Have Opportunities for Alternative Dispute Resolution to Minimize Costs and Lost Business Opportunities Associated with Protracted Proceedings and Complaint Procedures.

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**COMMENTS OF
THE ASSOCIATION OF
TELEMESSAGING SERVICES INTERNATIONAL**

The Association of Teleessaging Services International (ATSI) submits the following comments in response to the Commission's Notice of Proposed Rulemaking in these proceedings, FCC 96-308, adopted and released July 17, 1996.

STATEMENT OF INTEREST

The 640 service bureaus represented by the Association of Telemessaging Services International (ATSI) provide live telephone answering services and voice mail to over half of the 800,000 customers served by more than 3,000 service bureaus nationwide. ATSI members have provided the American public with the latest telecommunications service offerings for over 60 years and were the very first enhanced service providers (ESPs) in the telecommunications field and today represent the only enhanced service providers whose basic service involves, first and foremost, “people answering people”. Because of this unique aspect of telemessaging services, telemessaging plays an important public service function, providing live answering options for the medical and health service sectors, and others, where person-to-person communication is essential.

As the only small business association to be a member of the Information Industry Liaison Committee (IILC), ATSI continues to be instrumental in the development and deployment of open network architecture and the latest telecommunications technology. The ATSI membership consists almost entirely of small business service providers, with over 95 percent of the membership qualifying as small businesses, and 60 percent of the membership represented by female owned and operated business enterprises.

Telemessaging service bureaus require access to the incumbent's network elements, including the basic service arrangements, functions and features, in order to provide telemessaging services to their customers. The telemessaging industry requires access to such basic network functions as call forwarding, operator revert, personal receptionist service, dial tone, stutter dial tone, telephone listings, directory assistance, paging activation, and 2-way DID (directed inward dialing). The industry also requires access to such capabilities as integrated services digital network (ISDN), signaling system 7 (SS7) and the advanced intelligent network (AIN).

Telemessaging service providers are require these facilities and capabilities in order to assure their ability to provide satisfactory call completion. There are no technically feasible alternatives and no bypass options available, and the cost of accessing these offerings represent the second highest operating cost for telemessagers.

SUMMARY

These comments respond to observations made by the Commission in paragraph 65 of the NPRM.

ATSI agrees that the incumbent's control of essential local exchange facilities and the network elements required by ESPs provides opportunities to favor its own competitive services, including those offered through a separate affiliate, and therefore threatens to create anti-competitive forces in the marketplace. Specifically, the provision of inferior service or the denial of requested basic service functions to an ESP will have a negative affect on the ESP's ability to offer the quality of service required by its customers. Also, prices for basic service functions charged to the ESP that are higher than those charged to an affiliate, or higher than those attributed to the same basic service functions utilized by the incumbent to offer competitive services, and the impermissible use of CPNI by the incumbent or its affiliate for purposes of marketing competitive services will create equally damaging anti-competitive forces.

ATSI supports the development of non-accounting safeguards that offer small businesses the necessary opportunities to compete as ESPs and urges the Commission to be guided by outcomes, including the provision of means by which small business ESPs may effectively

compete in the marketplace. Effective competition requires unimpeded access to the incumbent network elements, which include their basic service arrangements, functions and features, at rates that both allow enhanced service providers to offer competitive services and prohibits an incumbent from offering similar services at noncompetitive, below market prices. The development and preservation of such an environment will allow market participants to offer new, innovative products and services for end-users and customers.

ATSI supports the development of safeguards as a means of ensuring a pro-competitive environment for small business ESPs, like telemessagers, offering competitive services in the marketplace. These safeguards are particularly relevant in the provision of interconnection, collocation and unbundled network elements at prices that are just, reasonable and nondiscriminatory.

Telemessagers rely on access to specific basic service arrangements, functions and features within the network, at points of interconnection and with opportunities for collocation that will not impede their ability to offer the variety of services associated with telemessaging.

Telemessagers also require access to network elements, and their basic service arrangements, functions and features, unbundled at the smallest practical level. These must be made available at costs disaggregated at the same levels so that the costs incurred by telemessagers for the use of

each network element are reflected in the pricing of competitive services offered by the incumbent for the use of the same network element. ATSI will address these cost issues relating to network access in the Accounting Safeguards NPRM.

ATSI also supports the development of safeguards providing for alternative dispute resolution within the context of negotiations. Guidelines encouraging the use of alternative means for resolving disputes between incumbents and ESPs regarding interconnection, unbundling and collocation, and discriminatory pricing and practices relating to these, will help small businesses minimize costs associated with prolonged procedures. ATSI also argues that Section 260 of the 1996 Act provides telemessagers an expedited complaint pathway where access to the network is unfairly denied or where negotiations are unnecessarily prolonged.

Finally, ASTI urges the Commission to adopt non-accounting safeguards that achieve the following outcomes:

1. Access to the incumbent network elements, and the basic service arrangements, functions and features, must be made available and remain unimpeded so that ESPs have every opportunity to offer desired telecommunications services at prices that are competitive and of quality that is acceptable to the marketplace;

2. The acceptability of points of interconnection, levels at which network elements are unbundled, and collocation arrangements must be determined in the final analysis in terms of whether or not the ESP is able to offer the same or similar competitive services as is the incumbent itself, or its affiliate; and
3. Competitive services offered by the incumbent, or its affiliate, and similar services offered by the ESP must share the same cost structure in terms of the network elements utilized (which include their basic service arrangements, functions and features) for each telecommunications service offered so that the cost component of each competitive service for the ESP and the incumbent are essentially identical and the rates paid for the network elements by the ESP is no greater than the cost attributed to that element by the incumbent.

ARGUMENTS

I. The Commission Should Adopt Safeguards That Will Allow Small Businesses To Effectively Compete as Enhanced Service Providers.

The Commission should establish safeguards in the areas of interconnection, collocation and unbundling that will allow small businesses to compete effectively as ESPs. Safeguards are particularly important for small businesses that do not have the resources to challenge tactics traditionally used by incumbents to deny access to the network and engage in prolonged negotiations for access to unbundled basic service functions and collocation arrangements.

II. Enhanced Service Providers Must be able to Access All Basic Service Functions of the Incumbent Network.

The Commission should establish safeguards that provide a minimum set of interconnection points and unbundled elements. This is particularly important to ESPs like telemessaging service bureaus that require access to the incumbent network features and functions, unbundled at the smallest practical level, in order to offer competitive services in the marketplace.

Safeguards should include a presumption that where interconnection or unbundling of a particular network element, or its feature or functionality, is utilized by the incumbent or made available to an affiliate of an incumbent, then it is technically feasible for the incumbent to provide the same or similar (functionally equivalent) points of interconnection and unbundled elements to a requesting ESP. If a function or feature is utilized by an incumbent or its affiliate in the provision of a telecommunications service, including any enhanced service, then it must be made available to ESPs. Related accounting safeguards should include a presumption that where a function or feature is utilized, then there are costs that can be disaggregated from the total network costs and imputed to it for purposes of nondiscriminatory pricing structures.

A. **All Technically Feasible Points of Interconnection Should Be Made Available So That Enhanced Service Providers May Access Basic Service Functions at Reasonable Costs.**

ATSI urges the Commission to develop safeguards that ensure the ability of an ESP to offer competitive services with the terms and conditions available under a given interconnection arrangement made available by the incumbent.

As enhanced service providers, telemessaging service bureaus rely on the availability of the incumbent network and its functions and features in order to offer competitive telemessaging services. At the same time, incumbents offer similar services and attempt to create market advantages by inflating the costs of interconnection or creating other barriers to interconnection. Incumbents should be required to provide points of interconnection at true costs and on terms and conditions that do not prohibit the requesting ESP from offering the desired telecommunications service at competitive rates in the marketplace. Incumbents should further be required to provide points of interconnection without consideration to the availability of a comparable service elsewhere.

ATSI urges the Commission to adopt safeguards that recognize that a technically feasible point of interconnection includes the service provider's point of presence, meet point, or other logical and reasonable points. The Commission should be guided by the goal that ESPs be able to achieve points of interconnection that allow them to offer competitive services at levels of quality that are indistinguishable from those utilized by the incumbent itself and through means by which the end-user enjoys unimpeded, uninterrupted use of the entire incumbent network.

B. Unbundled Elements Should Be Defined to Include All Basic Service Functions, Offered at the Smallest Practical Level and with Costs Disaggregated on a Service-by-Service Basis, So That Small Businesses May Compete With Incumbents in the Provision of Enhanced Telecommunications Services.

The Commission should develop safeguards that ensure that: 1) network elements are provided in a manner that allows a requesting ESP to combine such elements in order to offer the desired telecommunications service to the public; 2) network elements are offered at the smallest feasible level that allows the ESP an ability to offer the competitive services desired; and 3) individual network elements are priced on a disaggregated, service-by-service basis and that they are offered to ESPs at the same rates at which the incumbent effectively pays itself (or an incumbent affiliate effectively pays the incumbent) for the use of the same network element. At all times, the burden of proving that access to a network element is either technically infeasible or proprietary in nature, or that any other reason for denial exists, should reside with the incumbent.

Furthermore, the Commission should establish a federal presumption that where a basic service function can be identified, it is able to be unbundled and its costs are able to be disaggregated so that costs are the same for the ESP and the incumbent for each unbundled element. The Commission should further establish a federal presumption that where a function or feature is required to offer a competitive service, it is likewise able to be unbundled and its costs are able to be disaggregated.

ATSI views the identification of network elements, which include basic service arrangements, functions and features and their capabilities, as an ongoing, dynamic process, driven by market demand and product and service development. Specifically, a network element should include any basic service arrangement, function, or feature desired by the ESP. These should represent the components of the incumbent network unbundled at the smallest practical level required by the ESP to offer competitive services. These should be at the very least identical to the network elements, and their basic service arrangements, functions, features, and capabilities used by the incumbent itself or an affiliate in the provision of the same or similar competitive services.

ATSI urges the Commission to identify all basic service arrangements, functions and features and their capabilities required under any circumstances to provide a telecommunications service, including basic service functions such as call forwarding, operator revert, personal receptionist service, stutter dial tone, message waiting indication, paging activation, repeat calling, speed calling and 2-way DID. These should also include directory listings, directory assistance and billing services, as well as integrated services digital network (ISDN), signalling system 7 (SS7) and the advanced intelligent network (AIN).

**III. Enhanced Service Providers Must be able to Access the
Incumbent Network with Costs Comparable to Collocation
within the Central Office.**

The Commission should establish safeguards to ensure adequate opportunities for collocation when physical collocation is not practical on technical grounds, space limitations, or for other reasons. ATSI urges the Commission to recognize the need of the requesting ESP to achieve collocation at its point of presence, or meet point, whenever the incumbent refuses physical collocation within its central office.

ATSI urges the Commission to recognize that physical collocation within the central office is preferable, but not essential, and to recognize that the service provider's point of presence is also an reasonable alternative. The essential guideline to apply regarding acceptable arrangements for collocation, whether it be defined as physical or virtual, will focus on quality of service and costs. The service provider's need to access the network at a reasonable cost is paramount and should govern the outcome of how and where collocation will be provided.

In this vein, rather than attempt to identify every acceptable collocation arrangement, or engage in detailed distinctions between physical and virtual collocation, ATSI urges the Commission to establish safeguards that recognize acceptable collocation arrangements as any point of contact or presence at which no charges, other than those that would be levied at a point of physical collocation within the central office, may be levied.

ATSI urges the Commission to establish that any type of equipment may be permitted to collocate on the incumbent premises, and access any network element, in order for the service provider to offer the enhanced service desired. Therefore, any equipment required by the ESP to offer competitive services, similar to those offered by the incumbent, must be allowed and should be presumed technically feasible. ATSI recognizes the need to ensure that collocation within the central office or other incumbent premises will create no potential physical harm to the network.

**IV. Enhanced Service Providers Must Have Opportunities for
Alternative Dispute Resolution to Minimize Costs and Lost
Business Opportunities Associated with Protracted
Proceedings and Complaint Procedures.**

The Commission should establish safeguards that identify and penalize tactics that impede access to points of connection and unbundled network elements, opportunities for physical collocation. All such tactics are costly and have an anti-competitive impact beyond the particular issue in dispute.

Safeguards should provide opportunities for the employment of appropriate alternative dispute resolution mechanisms between the incumbent and service provider. These should include participation of recognized trade association organizations where their involvement would be appropriate and would serve a public service by reducing multiple negotiations involving the same issues, or issues that continue to arise, in a single forum or in more than one forum. This will provide for the prompt and speedy resolution of issues in dispute and minimize the costs associated with protracted proceedings and negotiations.

ATSI urges the Commission to develop procedures that encourage dispute resolution to take place between the parties before requests are submitted to state commissions or before other mechanisms are employed, such as those provided under Sections 260 of the Act.

CONCLUSION

The Commission should develop safeguards for interconnection, unbundling and collocation that allows ESPs to access network functions and features at costs that are just, reasonable and nondiscriminatory.

Network elements, their basic service arrangements, functions, features and capabilities, must be available to ESPs, on an unbundled basis, on the same terms and conditions as when utilized by the incumbent itself, which includes the requirement that the incumbent effectively pay itself for the use of a function or feature at the same rate it charges the ESP. Points of interconnection and arrangements for collocation must also be available on terms and conditions that are just, reasonable and nondiscriminatory in such a way that ESPs may offer competitive services when utilizing the incumbent network. Finally, the Commission should provide opportunities for the utilization of alternative dispute resolution mechanisms for the speedy resolution of disputes between the incumbent and the ESPs.

ATSI will comment on other aspects of this NPRM at a later date.

Respectfully submitted,

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